IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.869 of 2007

Commissioner of Income-tax,
Chennai. ..Appellant

Vs.

M/s.Faizan Shoes Pvt. Ltd.,
53, Vepery High Road,
Periamet,
Chennai-600 003. ..Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai 'A', Chennai in I.T.A. No.1479/Mds/2002 dated 28.02.2006 for the assessment year 1998-99 against the order of the Commissioner of Income Tax (A) XI, Chennai in ITA No.61-2001-02 dated 28.6.2002 for the assessment year 1998-99 against Deputy Commissioner of Income Tax Company Circle IV (2) Chennai-6 dated 10.4.2001 GI No: 110F.

For Appellant : Mrs.Pushya Sitaraman,
Sr.Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai 'A', Chennai in I.T.A. No.1479/Mds/2002 dated 28.02.2006, raising the following substantial questions of law:-

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"1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that rectification of the deduction granted by taking the correct figure from the audit certificate produced by the assessee is a debatable issue, not permissible u/s 154?

2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the issue is decided in the Revenue's favour on merits, but allowing the appeal on the ground that the rectification was beyond the scope of sec.154?"

2. The facts leading to the above substantial questions of law are as under:-

The assessee is a Private Limited Company incorporated under the Companies Act. The relevant assessment year is 1998-99 and the corresponding accounting year ended on 31.03.1998. The assessee-company filed its Return of income on 30.11.1998 declaring 'nil' income under normal computation. The assessee also computed the income under Section 115JA of the Act ("Act" in short) and for the purpose of MAT liability, deduction under Section 80HHC of the Act was claimed by the assessee based on working as per the Company's Act and also relied on a decision of the Income-tax Appellate Tribunal, Madras Bench, in the case of M/s.Sapri Garments, to support its contention. The Assessing Officer found that the decision relied on by the assessee in the case of M/s.Sapri Garments was with reference to the provisions of Section 115J of the Act, and since these provisions have been replaced by Section 115JA from the assessment year 1998-99, the claim of the assessee based on the said Tribunal's decision interpreting the old provisions, was not correct. Hence the Assessing Officer worked out the minimum alternate tax by deducting the amount of Rs.14,13,157/- while working out the income under Section 115JA of the Act. According to the Assessing Officer, there was a mistake crept in the assessment order and hence, he issued notice under Section 154 of the Act and rectified the assessment order. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) dismissed the appeal and held that the Assessing Officer has rightly rectified the Assessment Order based on the definition of book profit under Section 115JA of the Act. Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal allowed the appeal and set aside the order of the C.I.T.(A). Hence the present tax case by the Revenue.

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3. Learned Sr.Standing Counsel appearing for the Revenue submitted that there is a mistake on the face of the record. It is also submitted that the Assessing Officer had found out a wrong claim made by the assessee and hence the Assessing Officer is right in rectifying the assessment order under Section 154 of the Act. It is also further submitted that the application of the provisions of Section 115JA and mandatory provisions are to be applied, and in following the mandatory provisions, there is a mistake apparent on the face of the record.

4. Heard the counsel. The Tribunal had given a finding that the issue is debatable and there is a conflict of opinion among the decisions of the Tribunal on this point. The Tribunal, in its order, held as follows:-

> "4. After hearing both the sides and going through the case records, it is seen that there are diverse opinion on this issue taken by the various High Courts and Tribunal. ITAT, Chennai Bench in I.T.A. No.797/Mds/2002 dated 31/5/2003 in the case of Narmatha Textiles Ltd., Vs. JCIT has taken a view in favour of the Revenue. However, the Assessing Officer has acted u/s.154 of the Act which is a clear case where the issue is debatable and the Assessing Officer has acceded in his jurisdiction while acting u/s. 154 of the Act. This is not a mistake apparent from record. Here two views are possible. We have gone through the case laws cited by both the sides and finally hold that the issue is debatable. Hence the Assessing Officer has acceded his jurisdiction while acting u/s. 154 of the Act. Accordingly this appeal of the assessee is allowed."

From a reading of the above, it is seen that the issue is debatable and also there are diverse opinions on the issue taken by various Income-tax Appellate Tribunals. Once the issue is a debatable one, the same cannot be rectified under Section 154 of the Act. The Supreme Court, in the case of T.S.Balaram, Income-tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers and Others, 82 ITR 50 (SC), held that a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning or examining arguments on points where there may conceivably be two opinions. It has also been held that a mistake apparent from the record must be a glaring,

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obvious or self-evident mistake and no rectification proceedings can be initiated in the case of a debatable issue. A debatable issue could be considered only under regular assessment and the same cannot be rectified under Section 154 of the Act. The Tribunal correctly followed the principles enunciated in the Supreme Court judgment cited supra and came to the correct conclusion. Hence we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

5. In view of the foregoing reasons, no substantial questions of law arise for consideration of this Court and accordingly, the tax case is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To
1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Chennai "A" Bench,
   Sastri Bhavan, Rajaji Salai,Chennai.

2. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

3.The Addl. Commissioner of Income Tax,
Com. Range II, Chennai-34.

4. The Commissioner of Income-tax (Appeals) XI,
   121 Mahatma Gandhi Salai, Chennai-34.

5. The Deputy Commissioner of Income-tax,
   Company Circle IV(2),
   Chennai-6.

+1cc to M/s.Pushya Sitaraman, SSC Income Tax Dept., Sr 37296

GG (CO)
km/9.7.

T.C.(A) No.869 of 2007

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